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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION No. 3876 OF 2007**

Momin Mahmood Ahmed Mohamed Ilyas — Petitioner

Vs.

The State of Maharashtra & Ors. — Respondents

Mr. B. D. Joshi, Advocate for the Petitioner.

Ms. V. Mhaisapurkar, AGP for the Respondent No.1.

Mr. M. S. Lagu, Advocate for the Respondent Nos. 2 & 3.

**CORAM : D. G. KARNIK**
**AND**
**A. A. SAYED, JJ.**
**[ VACATION COURT ]**

**DATE : MAY 15, 2007.**

P.C.

1. Heard the Learned Counsel for the Petitioner and the Respondents.

2. By this petition, the petitioner challanges the order dated 11th May 2007 of Respondent No.3 - the Election Officer, rejecting the nomination paper of the Petitioner on the ground that the Petitioner had not signed the necessary declaration. It is not disputed that as per the applicable rules the declaration is required to be signed and the declaration forms a part of nomination form itself. Learned Counsel for the Petitioner submitted that the Petitioner should have

been allowed to cure the defect by signing the declaration at the time of scrutiny as offered by him. Learned Counsel for the Petitioner relied upon a decision of Division Bench of this Court in **Namdeo Chimanji Tapre and Anr. Vs. Govinddas Ratanlal Bhatia & Ors. AIR 1964 BOMBAY 137** in that regard. Learned Counsel for the Petitioner also referred to and relied on the decision of Supreme Court in **Jayrajbhai Jayantibhai Patel Vs. Anilbhai Jayantibhai Patel & Ors. 2006(6) ALL MR (S.C.) 6.**

3. Per contra, Learned Counsel for the Respondent Nos. 2 & 3 submitted that Section 16 of the Bombay Provincial Municipal Corporation Act, 1949 provides for a remedy by way of Election Petition, in the event of improper rejection of a nomination paper, and therefore, this Court should not entertain the petition.

4. It is not disputed that under the applicable rules, the Petitioner was required to sign the declaration form. We, therefore, see no error in the decision of the Respondent NO.3 in rejecting the nomination paper of the Petitioner.

5. In **Namdeo C. Tapre Vs. Govinddas Bhatia (Supra),** the Division Bench of this Court while considering the appeal arising out of an Election

Petition set aside the election on the ground that nomination paper of the 8th Respondent therein was improperly rejected. The Division Bench held that he should have been allowed to rectify the defect in the nomination paper. Whether in exercise of a Writ Jurisdiction, Court should permit the rectification of a defect in a nomination paper and compel Election Officer / Returning Officer in accepting nomination paperwas not in issue before the Division Bench. On the other hand, in **N. P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency & Ors, A.I.R.(39) 1952 Supreme Court 64**, a the Constitution Bench of the Hon'ble Supreme Court has observed in paragraph 27 of the decision thus -

> "We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Art. 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must, therefore, fail and is dismissed."

The Constitution Bench has clearly laid down that under Article 226 of the Constitution of India, a High Court should not entertain petition regarding improper

rejection of a nomination paper. In **Jayrajbhai Patel Vs. Anilbhai Patel (Supra),** the Hon'ble Supreme Court has reiterated the position and has stated that the power of judicial review under Article 226 (in an election matter) may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards.

6. In the present case, we have already noted that the Petitioner had not signed the necessary declaration. In the circumstances, the decision of the Respondent No.3 was right in the facts and circumstances of the case and in any event cannot be said to be illogical or sufferring from procedural impropriety shocking the conscience of the court. In the circumstances, the Writ Petition can not be entertained. Accordingly, the Writ Petition is dismissed summarily.

Sd/-
[ A. A. SAYED, J.]

Sd/-
[ D. G. KARNIK, J.]